

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

UPMC and its subsidiary UPMC)	
PRESBYTERIAN SHADYSIDE,)	
Single Employer, d/b/a UPMC)	Docket No. 18-1334
PRESBYTERIAN HOSPITAL and)	
d/b/a UPMC SHADYSIDE)	Consolidated with Docket
HOSPITAL,)	Nos. 18-1237, 18-1332,
)	18-1333
Petitioners,)	
)	
v.)	
)	
NATIONAL LABOR RELATIONS)	
BOARD,)	
)	
Respondent.)	

NON-BINDING STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court’s Order of December 19, 2018, Petitioner UPMC Presbyterian Shadyside (“Petitioner”) hereby provides this preliminary and non-binding statement of issues to be raised:

1. Whether the National Labor Relations Board (“Board”) erred in affirming the finding of the Administrative Law Judge (“ALJ”) that Petitioner disparately enforced its restrictions on insignia in violation of Section 8(a)(1) of the National Labor Relations Act (the “Act”) by directing Jamie Hopson to remove a sticker while in an immediate patient care area.

2. Whether the Board erred in affirming the ALJ’s finding that supervisor Jason Hogan’s comment, coupled with his nonverbal cues, constituted

an implied threat to Jynella Everett that her union activities could adversely affect her upcoming performance appraisal in violation of Section 8(a)(1) of the Act.

3. Whether the Board erred in affirming the ALJ's finding that Petitioner discriminatorily enforced its bulletin board policy against employees posting union-related material in violation of Section 8(a)(1) of the Act.

4. Whether the Board erred in affirming the ALJ's finding that Petitioner's request that Chaney Lewis write a statement about posting literature on Petitioner's bulletin boards constituted an unlawful interrogation in violation of Section 8(a)(1) of the Act.

5. Whether the Board erred in affirming the ALJ's finding that Petitioner violated Sections 8(a)(3) and (1) of the Act by issuing a final written warning to Chaney Lewis.

6. Whether the Board erred in affirming the ALJ's finding that Petitioner violated Sections 8(a)(3) and (1) of the Act by suspending Leslie Poston and issuing her a final written warning.

7. Whether the Board erred in affirming the ALJ's finding that Petitioner's request that Leslie Poston write a statement about a mass email she sent constituted an unlawful interrogation in violation of Section 8(a)(1) of the Act.

8. Whether the Board adopted a new subjective standard by which to judge employer investigatory interviews and, in so doing, committed a material error that warranted reconsideration of its decision in this regard.

9. Whether the Board erred in affirming the ALJ's finding that Petitioner violated Sections 8(a)(3) and (1) of the Act by issuing a final written warning to Albert Turner and subsequently terminating his employment in light of the record evidence concerning Turner's failure to comply with Petitioner's policies and applicable safety standards.

10. Whether the Board erred in affirming the ALJ's finding that Petitioner violated Sections 8(a)(3) and (1) of the Act by issuing James Staus verbal warnings on April 4, 2013 and April 26, 2013, placing him on a performance improvement plan, and subsequently terminating his employment.

11. Whether the Board erred in affirming the ALJ's finding that Petitioner violated Sections 8(a)(4), (3) and (1) of the Act by discharging Ronald Oakes.

12. Whether the Board erred in affirming the ALJ's finding that Petitioner's Environmental Support Services (ESS) Employee Council ("ESS Employee Council") was a labor organization within Section 2(5) of the Act and that Petitioner dominated or interfered with the administration of the ESS Employee Council in violation of Section 8(a)(2) of the Act.

13. Whether the Board's misstatements and/or disregard of record evidence in determining that Petitioner violated Section 8(a)(2) of the Act by dominating or interfering with the administration of the ESS Employee Council constituted material errors that warranted reconsideration of its decision in this regard.

14. Whether the Board erred in affirming the ALJ's special remedies, including a broad cease and desist order and notice reading requirement.

15. Whether the Board's amendment of the ALJ's notice posting remedy to require Petitioner to post the Notice to Employees for 120 consecutive days constituted a punitive and unjustified extraordinary remedy and, relatedly, whether the Board failed to demonstrate why the traditional 60-day notice period was insufficient.

16. Whether the Board's amendment of the ALJ's notice reading remedy to require Petitioner to allow the union access to its facilities during the notice reading constituted a punitive and unjustified extraordinary remedy.

17. Whether the Board erred by failing to demonstrate why the record evidence and applicable legal precedent established that traditional remedies were insufficient to remedy the alleged violations of the Act.

18. Whether the Board's imposition of these additional punitive and unjustified extraordinary remedies constituted material errors that warranted reconsideration.

In addition to the issues specifically raised above, Petitioner raises all other issues properly preserved in the proceedings below and raised by the nature of the appeal.

Dated: January 18, 2019

Respectfully submitted,

/s/Jennifer G. Betts

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of January, 2019, the foregoing
STATEMENT OF ISSUES TO BE RAISED was served on all counsel of record
through the CM/ECF system and by First Class Mail on the following:

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